

(1867) 07 CAL CK 0004

Calcutta High Court

Case No: Privy Council Appeal No. 853 of 1865

Mussamat Velaety Begum

APPELLANT

Vs

Rugghonath Persad

RESPONDENT

Date of Decision: July 8, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

The question is whether an appeal lies to Her Majesty in Council against an order of this Court passed in a case of execution of decree in which the amount involved exceeds Rs. 10,000 or upwards. We are of opinion that an appeal does lie. Cl. 39 of the Letters Patent of the High Court gives an appeal "in any matter not being of criminal jurisdiction, from any final judgment, decree, or order" of the High Court made on appeal, provided that the sum or matter at issue is above the amount or value of Rs. 10,000. There is an additional clause (cl. 40) which gives an appeal from interlocutory judgments, decrees, and orders.

2. There are many things done in execution of a decree which may raise very important questions relating to property of the value of Rs. 10,000 and upwards. If the sum or matter at issue is not above that amount, the order would not be appealable to Her Majesty in Council, unless when the Court, for other reasons, may think proper to admit an appeal.

3. By s. 283, Act VIII of 1859, it was enacted that "all questions regarding the amount of any profits which, by the terms of the decree, may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be payable in respect of the subject-matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree, or the like, shall be determined by order of the Court executing the decree, and not by separate suit: and the order passed by the Court shall be open to appeal." That section was repealed by s. 1, Act XXIII of 1861, and it was re-enacted by s. 11, which was as follows: "All questions regarding the amount of any mesne profits which, by

the terms of the decree, may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be payable in respect of a subject-matter of a suit between the date of institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree, or the like; and any other questions arising between the parties to the suit in which the decree was passed, and relating to the execution of the decree, shall be determined by order of the Court executing the decree, and not by separate suit, and the order passed by the Court shall be open to appeal. Provided that, if upon a perusal of the petition of appeal and of the order against which the appeal is made, the Court shall see no reason to alter the order, it may reject the appeal, and it shall not be necessary in such case to issue a notice to the respondent, before the order of rejection is passed."

4. Questions of the greatest importance may arise under that section; and the order of the Court would be substantially a new decree in reference to such matters. Act VIII of 1859 was clearly before the Government when the Charter of the High Court was passed, inasmuch as the procedure of that Act is directed by the Charter to be followed. Therefore, whether they had s. 11, Act XXIII of 1861, or s. 283, Act VIII of 1859 in view, they must have seen that, by the Code of Civil Procedure, several questions might arise for determination in the execution of a decree, which might involve matters of considerable importance and considerable value; and having that Code before them they allowed an appeal "from any final judgment, decree, or order," leaving out the word "decretal" which was used in connexion with the word "order" in the Rules of 1838 relating to appeals to Her Majesty in Council.

5. Under these circumstances, there is no doubt that an appeal will lie from an order made by this Court in a case in the miscellaneous department relating to the execution of a decree, provided the amount or matter in issue exceeds Rs. 10,000 as well, as has already been stated, in any other case in which the Court shall, for any other reasons, admit an appeal when the amount or value is less than Rs. 10,000. It does not matter whether we refer to the old Charter or to the present one, because on this point there is no substantial difference between the clauses of the old and new Charters.